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AGREEMENT AND ASSIGNMENT

Dated as of February 1, 1976

Between

PLASSER AMERICAN CORPORATION

as Vendor

and

FORT WAYNE NATIONAL BANK

as Assignee

Re:

\$1,270,500 Maximum Principal Amount 9-5/8%  
Conditional Sale Indebtedness due 1982

of

Illinois Central Gulf Railroad Company

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(I.C.G. No. 76-1)

## TABLE OF CONTENTS

<u>Section</u>	<u>Heading</u>	<u>Page</u>
	Parties .....	1
1.	Assignment by Vendor .....	1
2.	Covenants and Agreements of Vendor . . . . .	2
3.	Equipment Markings .....	4
4.	Recordation .....	4
5.	Conditions Precedent to Payment by Assignee ....	4
6.	Further Assignments .....	8
7.	Representation of Vendor; Further Assurances .....	8
8.	Governing Law .....	9
9.	Execution in Counterparts .....	9

## AGREEMENT AND ASSIGNMENT

AGREEMENT AND ASSIGNMENT dated as of February 1, 1976, between PLASSER AMERICAN CORPORATION, a Delaware corporation ("Vendor") and FORT WAYNE NATIONAL BANK, acting as Agent and Assignee under a Finance Agreement dated as of February 1, 1976 (the "Finance Agreement"), said Bank as so acting being hereinafter called the "Assignee").

WHEREAS, the Vendor and ILLINOIS CENTRAL GULF RAILROAD COMPANY, a Delaware corporation ("Railroad") have entered into a Conditional Sale Agreement dated as of February 1, 1976 (the "Conditional Sale Agreement"), covering the sale and delivery, on the conditions therein set forth, by the Vendor and the purchase by the Railroad of the railroad equipment described in Schedules A-1, A-2 and A-3 to the Conditional Sale Agreement (collectively the "Equipment" and individually "Item" or "Items of Equipment").

WHEREAS, the Railroad, the Assignee and the Investor hereinafter referred to have entered into the Finance Agreement providing for the acquisition from the Vendor by the Assignee of the right, title and interest of the Vendor under the Conditional Sale Agreement, subject to the conditions set forth below.

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (the "Assignment"),

### W I T N E S S E T H:

That, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Vendor, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. Assignment by Vendor. The Vendor hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) All the right, security title and interest of the Vendor in and to each Item of Equipment when and as delivered and accepted and upon payment by the Assignee to the Vendor of the amount required to be paid under Section 5 hereof;

(b) All the right, title and interest of the Vendor in and to the Conditional Sale Agreement, and in and to any and all amounts which may be or become

due or owing to the Vendor under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the Conditional Sale Agreement, other than:

(i) Subsequent to the execution of this Agreement but prior to the date of payment in respect of an Item or Items of Equipment on a Closing Date pursuant to the Conditional Sale Agreement, the right to receive reasonable expenses of the Vendor in respect of such Item or Items as provided in Section 16.7 thereof, and

(ii) At any time subsequent to the execution of this Assignment, the rights of the Vendor in respect of such Item or Items pursuant to Sections 1 and 2 thereof, the right to receive the payments in respect of such Item or Items specified in Section 14.7 thereof, the right to receive reimbursement for taxes paid or incurred by the Vendor in respect of such Item or Items pursuant to Section 7 thereof, the right to indemnity from the Railroad for claims arising against the Vendor provided in Section 12 thereof, the right to the fulfillment of certain conditions by the Railroad as provided in Section 13 thereof and the right to receive the 10% amount of the Purchase Price of the Ballast Undercutter Cleaner described in Schedule A-1 thereto if and when payable to the Vendor by the Railroad pursuant to the terms of the letter agreement referred to in Section 5 hereof; and

(c) Except as limited above in subparagraph (b) hereof, all of the Vendor's rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse, however, against the Vendor for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify the obligations of the Vendor to cause to be constructed or to sell and deliver the various Items of Equipment to be built in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements contained in Section 13 of the Conditional Sale Agreement or relieve the Railroad from its obligations to the Vendor under Sections 1, 2, 7, 12, 13, 14 and 16.7 of the Conditional Sale Agreement, it being understood and agreed that notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Section

14 of the Conditional Sale Agreement, all obligations of the Vendor to the Railroad shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Vendor. In furtherance of the foregoing assignment and transfer, the Vendor hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Vendor to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. Covenants and Agreements of Vendor. The Vendor covenants and agrees that it will cause to be constructed and will sell and deliver the various Items of Equipment to the Railroad, in accordance with the provisions of the Conditional Sale Agreement, and that, notwithstanding this Assignment, it will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Vendor. The Vendor further covenants and agrees that it will warrant to the Assignee and the Railroad that at the time of delivery of each Item of Equipment to the Railroad under the Conditional Sale Agreement it had legal title to such Item and good and lawful right to sell such Item and the title to such Item was free of all claims, liens and encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement; and the Vendor further covenants and agrees that it will defend the title to such Item against the demands of all persons whomsoever based on claims originating prior to said delivery of such Item by the Vendor to the Railroad; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder.

The Vendor covenants and agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Vendor will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, set-off, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Vendor of any obligation with respect to the Equipment or the delivery or warranty thereof or the causing to be constructed thereof by such Vendor, or under Section 13 of the Conditional Sale Agreement, or by reason of any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Vendor. The Vendor's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Section 14.4 of the Conditional Sale Agreement, to strike any defense, set-off, counterclaim or recoupment

asserted by the Railroad in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, set-off, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Vendor of the asserted defense, set-off, counterclaim or recoupment and the Assignee's giving the Vendor the right, at the Vendor's expense, to compromise, settle or defend against such defense, set-off, counterclaim or recoupment. Any and all such obligations shall be and remain enforceable by the Railroad against and only against the Vendor and shall not be enforceable against the Assignee or any party or parties in whom security title to the Equipment or any unit thereof or any of the rights of the Vendor under the Conditional Sale Agreement shall vest by reason of this Assignment or of successive assignments. The Vendor will indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, article or material which infringes or is claimed to infringe on any patent or other right, except for any designs, articles or materials specified by the Railroad and not manufactured by the Vendor. The Assignee will give prompt notice to the Vendor of any suit, proceeding, action, claim or demand by or against the Assignee herein described. With respect to any such suit, proceeding, action, claim or demand, the Assignee shall provide full cooperation to the Vendor. The Vendor shall be solely responsible for, and have the sole authority over, the conduct of any such suit, proceeding, action, claim or demand.

The Vendor agrees that any amount payable to it by the Railroad, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien or charge on any Item of Equipment.

SECTION 3. Equipment Markings. The Vendor will cause to be plainly, distinctly, permanently and conspicuously marked by a plate or stencil in contrasting color on both sides of each Item of Equipment, at the time of delivery thereof to the Railroad, in letter not less than one inch in height, the following legend:

"Fort Wayne National Bank, as Agent and Assignee, Secured Party".

SECTION 4. Recordation. Upon request of the Assignee, its successors and assigns, the Vendor will execute and deliver all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Vendor therein or in the Equipment.

SECTION 5. Conditions Precedent to Payment to Assignee. The Assignee, on or before 11:00 A.M., Fort Wayne, Indiana time, on each Closing Date (the "Closing Date") fixed as provided in Section 3.3 of the Conditional Sale Agreement with respect to an Item or Items of Equipment, shall pay to the Vendor at the corporate

trust office of the Assignee at 110 West Berry Street, Fort Wayne, Indiana 46802, an amount equal to the Purchase Price of such Item or Items of Equipment required to be paid pursuant to Section 3 of said Agreement (except with respect to the Ballast Undercutter Cleaner described in Schedule A-1 to the Conditional Sale Agreement in which case the Assignee on the Closing Date therefor shall, pursuant to a letter agreement dated as of February 1, 1976 among the Railroad, the Vendor, the Assignee and the Investor hereinafter referred to, pay 90% of the Purchase Price therefor to the Vendor and shall pay the balance of such Purchase Price to the Railroad) provided that there shall have been delivered to the Assignee and Messrs. Chapman and Cutler, the following documents, in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to the Assignee and Messrs. Chapman and Cutler:

(a) Bill or Bills of Sale from the Vendor to the Assignee, transferring to the Assignee security title to such Item or Items of Equipment and warranting to the Assignee and to the Railroad that at the time of delivery thereof to the Railroad under the Conditional Sale Agreement the Vendor had legal title to such Item or Items and good and lawful right to sell such Item or Items, and title to such Item or Items was free of all claims, liens and encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement.

(b) Certificate or Certificates of Acceptance signed by an inspector or other authorized representative of the Railroad stating that such Item or Items of Equipment have been inspected and accepted by him on behalf of the Railroad and further stating that there was plainly, distinctly, permanently and conspicuously marked by a plate or stencil in contrasting color on each side of each of such Item or Items at the time of its acceptance, in letters not less than one inch in height, the following legend:

"Fort Wayne National Bank, as Agent and Assignee, Secured Party".

(c) Invoice from the Vendor to the Railroad and the Assignee for such Item or Items of Equipment accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the price of such Item or Items as set forth in said invoice and a certification by the Railroad that such price does not exceed the fair market value of such Item or Items;

(d) Opinion of Messrs. Chapman and Cutler, who are acting as special counsel for the Assignee and for the investor (the "Investor") named in the Finance Agreement, addressed to the Assignee and the Investor, dated as of the Closing Date, to the effect that (i) the Conditional Sale Agreement has been duly authorized, executed and delivered by the parties thereto and is

a valid and binding instrument enforceable in accordance with its terms, (ii) this Assignment and, assuming the due authorization, execution and delivery by the Investor, the Finance Agreement, have been duly authorized, executed and delivered by the respective parties thereto and are valid and binding instruments enforceable in accordance with their respective terms, (iii) the Assignee is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Assignment and is the holder of a security interest in such Item or Items of Equipment, which Item or Items of Equipment at the time of delivery thereof to the Railroad under the Conditional Sale Agreement were free of all claims, liens and encumbrances except only such security interest, the rights of the Railroad under the Conditional Sale Agreement and the lien of any existing general mortgage of the Railroad, which lien by the terms of such general mortgage is duly subordinated to the rights of the Assignee under the Conditional Sale Agreement, (iv) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement or this Assignment or if such approval is necessary, such approval has been obtained, (v) the Conditional Sale Agreement and this Assignment (or a financing statement or similar notice thereof if and to the extent permitted or required by applicable law) has been filed for record or recorded in all public offices wherein such filing or recordation is necessary to protect the rights of the Assignee in the United States of America, (vi) the offering, sale and delivery of the Conditional Sale Agreement, the conditional sale indebtedness payable thereunder and the Certificates of Interest issued pursuant to the Finance Agreement under the circumstances contemplated by the Finance Agreement constitute an exempted transaction under the Securities Act of 1933, as amended, which does not require registration thereunder of the Conditional Sale Agreement, said conditional sale indebtedness or said Certificates of Interest and under the Trust Indenture Act of 1939 which does not require qualification of an indenture thereunder, and if the Investor should in the future deem it expedient to sell its interest in said conditional sale indebtedness or said Certificates of Interest (which the Investor does not now contemplate nor foresee) such sale would be an exempted transaction under the Securities Act of 1933, as amended, providing that the circumstances involved in any such transaction do not constitute the Investor an "underwriter" of said conditional sale indebtedness or said Certificates of Interest within the meaning of said Act, and the transaction is not made through an "underwriter" within the meaning of said Act, and (vii) the opinion of counsel for the Railroad is satisfactory in scope, form and substance to special counsel and in their opinion the Assignee and the Investor are justified in relying thereon;

Vendor

*DEK*  
*T.E. JMK*  
(e) Opinion of counsel for the Railroad addressed to the ~~Manufacturer~~, the Assignee and the Investor, dated as of the Closing Date, to the effect set forth in clauses (iii), (iv) and (v) of subparagraph (d) above, and stating that (i) the Railroad is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorpora-



tion, and has the power and authority to own its properties and to carry on its business as now conducted and is duly qualified to do business as a foreign corporation in all states where the character of its properties or the nature of its activities makes such qualification necessary; (ii) the Conditional Sale Agreement and the Finance Agreement have each been duly authorized, executed and delivered on behalf of the Railroad and are valid and binding instruments enforceable against the Railroad in accordance with their respective terms; and (iii) the execution and delivery by the Railroad of the Conditional Sale Agreement and the Finance Agreement do not violate any provision of any law, any order of any court or governmental agency, the Charter or By-laws of the Railroad, or any indenture, agreement, or other instrument to which the Railroad is a party or by which it, or any of its property is bound, and will not be in conflict with, result in the breach of, or constitute (with due notice or lapse of time, or both) a default under, any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Railroad;

(f) Opinion of counsel for the Vendor, addressed to the Railroad, the Assignee and the Investor, dated as of the Closing Date, to the effect that (i) the Conditional Sale Agreement and this Assignment have each been duly authorized, executed and delivered by the Vendor and, assuming the due authorization, execution and delivery thereof by each other party thereto, are valid instruments binding upon the Vendor and enforceable against the Vendor in accordance with their respective terms and (ii) the Assignee is vested with all of the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this assignment and is the holder of a security interest in such Item or Items of Equipment, which Item or Items of Equipment at the time of delivery thereof to the Railroad under the Conditional Sale Agreement were free of all claims, liens and encumbrances arising by, through or under the Vendor except only such security interest and the rights of the Railroad under the Conditional Sale Agreement;

(g) Certificate of a Vice President or the Treasurer of the Railroad to the effect that no Event of Default as specified in the Conditional Sale Agreement or any event which with the lapse of time and/or notice provided for in the Conditional Sale Agreement would constitute such an Event of Default, has occurred and is continuing, and to the effect that, since December 31, 1974, there has been no adverse change in the affairs or financial condition of the Railroad.

In giving the opinions specified in the preceding subparagraphs (d), (e) and (f), counsel may qualify any opinion to the effect that any agreement is a valid and binding instrument enforceable in accordance with its terms by general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally. In giving the opinions specified in the preceding subparagraphs (d) and (e), counsel may rely

as to the title to the Item or Items of Equipment upon the opinion of counsel for the Manufacturer. In giving the opinions specified in the preceding subparagraph (d), counsel may rely as to the existence and effect of any lien of any general mortgage of the Railroad upon the opinion of counsel for the Railroad. In giving the opinions specified in the preceding subparagraph (f), counsel may rely as to title to the Item or Items of Equipment upon the opinion of counsel for the manufacturer thereof and as to any claims, liens or encumbrances on the Item or Items of Equipment upon a certificate of an officer of the Vendor.

The obligation of the Assignee hereunder to make payment for the Equipment is hereby expressly conditioned upon the prior receipt by the Assignee, pursuant to the Finance Agreement, of the funds to be furnished to the Assignee by the Investor pursuant thereto.

The Assignee shall not be obligated to make any of the above-mentioned payments at any time while an Event of Default, or any event which with the lapse of time and/or notice provided for in the Conditional Sale Agreement would constitute an Event of Default, shall be subsisting under the Conditional Sale Agreement. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Vendor, without recourse to the Assignee, all right, security title and interest of the Assignee in and to the Items of Equipment and the Conditional Sale Agreement with respect to which payment has not been made by the Assignee.

It is understood and agreed that the Assignee shall not be required to make any payment with respect to any Items of Equipment excluded from the Conditional Sale Agreement pursuant to Sections 2.3 and 3.1 thereof. The Assignee shall at the request of the Vendor or the Railroad execute or join in the execution of such supplemental agreement as may be deemed necessary or appropriate to exclude, or if such Equipment shall have been delivered and accepted, to remove, any such Equipment from the Conditional Sale Agreement and from this Agreement and Assignment.

SECTION 6. Further Assignments. Subject to the terms and provisions of the Finance Agreement, the Assignee may assign in the entirety all of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Railroad thereunder to any corporation into or with which the Assignee shall have become merged or consolidated or which shall have acquired property of the Assignee as an entirety or substantially as an entirety, or to any bank or trust company organized under the laws of any state or of the United States of America having a combined capital and surplus of not less than \$50,000,000. In the event of any such assignment each such subsequent or successive assignee shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 7. Representation of Vendor; Further Assurances. The Vendor hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized and lawfully executed and delivered by it for a valid consideration, that (assuming due authorization, execution and delivery by the other parties thereto) it is a valid and existing agreement binding upon the Vendor and the other parties thereto, and that it is now in force without amendment thereto; and

(b) covenants and agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be reasonably necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, security titles and interests hereby assigned and transferred to the Assignee or intended so to be.

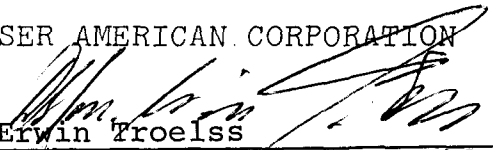
SECTION 8. Governing Law. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment (or a financing statement or similar notice thereof) shall be filed, recorded or deposited.

SECTION 9. Execution in Counterparts. This Assignment may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart. The Assignee agrees to deliver one of such counterparts, or a certified copy thereof, to the Railroad. Although this Assignment is dated for convenience as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the Vendor and the Assignee have caused these presents to be executed in their respective corporate names by officers or representatives duly authorized, and

their respective corporate seals to be affixed and duly attested,  
all as of the day, month and year first above written.

PLASSER AMERICAN CORPORATION

By   
Its Executive Vice President

(Corporate Seal)

Attest:


 John Mura  
Secretary

FORT WAYNE NATIONAL BANK,  
as Assignee

By   
Its President

(Corporate Seal)

Attest:

  
~~Secretary~~  
Sr. Vice President & Cashier

STATE OF VIRGINIA       )  
CITY                        ) SS:  
~~XXXXXX~~ OF CHESAPEAKE    )

On this 30th day of April, 1976, personally appeared Erwin Troelss, to me personally known, who being by me duly sworn, says that he is ~~the~~ Exec. V.P. of PLASSER AMERICAN CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

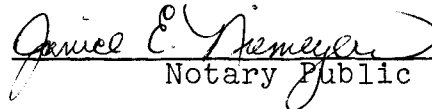
  
Notary Public  
Peggy Jean Matthews

(Seal)

My Commission Expires: February 17, 1980.

STATE OF INDIANA     )  
                              ) SS:  
COUNTY OF ALLEN     )

On this 7th day of May, 1976, before me personally appeared J. R. Lehman, to me personally known, who being by me duly sworn, says that he is an Exec. Vice Pres. of FORT WAYNE NATIONAL BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
Notary Public

(Seal)

My Commission Expires:  
March 24, 1980

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

ILLINOIS CENTRAL GULF RAILROAD COMPANY hereby acknowledges due notice of the assignments made by the foregoing Agreement and Assignment and consents to and accepts the terms thereof applicable to it this 23<sup>rd</sup> day of April, 1976.

ILLINOIS CENTRAL GULF RAILROAD  
COMPANY

By

S. E. Hinkle  
Its Vice President

(Corporate Seal)

Attest:

J. B. Smith  
Secretary